

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of an Agreement Concerning Certain Generation Assets Known as “Contra Costa 8” Pursuant to a Settlement and Release of Claims Agreement Approved by the Commission on January 14, 2005, for Authority to Recommence Construction, and for Adoption of Cost Recovery and Ratemaking Mechanisms Related to the Acquisition, Completion, and Operation of the Assets.

Application 05-06-029
(Filed June 17, 2005)

**ADMINISTRATIVE LAW JUDGE’S RULING
ON CARE NOTICE OF INTENT TO CLAIM COMPENSATION**

On August 11, 2005, CALifornians for Renewable Energy, Inc. (CARE) filed a Notice of Intent to Claim Intervenor Compensation (NOI) in this proceeding. No responses have been received.

This Ruling, after consultation with the Assigned Commissioner, is the “preliminary ruling addressing whether the customer will be eligible for an award of compensation.” (Pub. Util. Code § 1804(b)(1).)¹ CARE is found eligible.

1. Timely Filing

A prehearing conference (PHC) was held on August 11, 2005. The NOI was filed on August 11, 2005. The NOI was filed within 30 days of the PHC. (§1804(a)(1).) The filing is timely.

¹ All code references are to the Public Utilities Code unless otherwise noted.

2. Customer

The Public Utilities Code defines customer in three ways, which the Commission has in turn categorized as:

Category 1: a participant representing consumers.

Category 2: a representative authorized by a customer.

Category 3: a representative of a group or organization that is authorized by its articles or bylaws to represent the interests of residential customers.

(Section 1802(b); Decision (D.) 98-04-059, 79 CPUC2d 628.)

CARE asserts that it meets the definition of both a Category 2 and a Category 3 customer. CARE states that it is a “Customer” both as a representative authorized by a customer and as an organization authorized to represent the interests of residential customers. First, CARE has been authorized to represent customers in the Hunter’s Point and Bay View (HPBV) neighborhoods of San Francisco. CARE identified 40 individuals who authorized CARE to represent it in an action to rectify environmental injustices experienced by the HPBV communities, most notably, the continued operation of the Hunter’s Point Power Plant. In addition, CARE confirms that 100% of its members are residential ratepayers.

Second, CARE is authorized by its Bylaws to represent the interest of residential customers. Specifically, CARE’s Bylaws provides in pertinent part that the functions of CARE are as follows:

1. To supply on a nonprofit basis both nonprofessional and professional legal assistance to planning, conservation groups, small business customers, residential customers, small business and residential renewable energy self suppliers, and neighborhood groups, in regards to new energy projects in the state of California.

2. To engage on a nonprofit basis in research and information dissemination with respect to legal rights in a healthy environment by giving legal advice, appearing before administrative bodies, and enforcing environmental laws through court actions.

CARE, therefore, asserts that it clearly qualifies as both an authorized representative and an authorized group in accordance with Section 1802(b).

3. Adequacy of Representation

CARE is a 501(c)(3) corporation comprised of members whom are residential ratepayers who live in the affected low-income communities of color of Pittsburg, the geographic area where Pacific Gas and Electric Company's (PG&E) new electric generating facility, Contra Costa 8 (CC8), the subject of this instant application, is located. As such, CARE asserts that it is the only intervenor who will represent these residential ratepayers who will bear the disparate environmental and socioeconomic burden of the CC8 project. CARE also represents the BVHP residents who seek the shut-down of the Mirant Potrero Hill power plant in 2008 when (1) PG&E's BVHP power plant is shut-down, (2) transmission upgrades and the TransBay Cable Project is completed, and (3) the CC8 project is completed.

CARE argues that it is the only intervenor that can effectively represent the residential ratepayers affected by the CC8 facility and the BVHP power plant. While there are other intervenors, such as the Commission's Office of Ratepayer Advocates (ORA), who represent ratepayers in general, CARE specifically represents the ratepayers who will be affected by the CC8 project itself.

The Commission has found that participation in Commission proceedings by parties representing the full range of affected interests is important. Such participation assists the Commission in ensuring that the record is fully

developed and that each customer group receives adequate representation. (See, for example, Ruling issued July 7, 1999, page 3, in A.98-09-003, et al.) Based on CARE's representations in its NOI, it is reasonable to assume that CARE has knowledge and experience that may support and complement the work of ORA or others.

4. Significant Financial Hardship

Pursuant to Section 1804(a)(2)(B), a NOI to claim compensation may include a showing that participation in the proceeding will pose a significant financial hardship to the customer. Section 1802(g) defines "significant financial hardship" to mean:

Either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocates fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

CARE alleges that it can establish significant financial hardship under either criteria: (1) neither CARE as a group nor its individual members have the financial resources to pay the costs of effective participation in this proceeding, and (2) the weight of the estimated cost of participation exceeds the economic interest of the individual ratepayer

To further bolster its claim of significant financial hardship, CARE provided financial information on one of its members, Lynne Brown.² In sum, it is clear from Mr. Brown's financial status that he could not fully participate in the

² CARE provided the financial statement of Lynne Brown, one of the customers that authorized CARE to represent him, in a Supplement to CARE's NOI in A.02-09-043.

Commission proceeding absent financial assistance from the intervenor compensation program. In addition, CARE provided financial information on its own financial situation.³ Basically, CARE's financial status also shows that the organization could not fully participate in a Commission proceeding without a significant financial burden absent the intervenor compensation program.

CARE presented information in its Supplemental NOI in A.02-09-043 that a typical residential electric bill for an individual CARE member was approximately \$245 per month. When that amount is compared to the estimated amount of \$342,500 for full participation in this proceeding, CARE has demonstrated that the economic interest of the individual members of CARE is small in comparison to the costs of effective participation in the proceeding.

5. Nature and Extent of Planned Participation

The NOI must include a statement of the nature and extent of the customer's planned participation as far as it is possible to set out when the NOI is filed. (§ 1804(a)(2)(A)(i).) CARE states that it intends to participate actively in all aspects of the proceeding including any environmental review. CARE's participation will include conducting discovery, preparing testimony, defending testimony in hearings, cross-examining witnesses, and filing briefs, comments and other pleadings as necessary. CARE's focus will be on determining the need for the CC8 project, defending community values affected by the project and identifying possible alternatives to the CC8 project that could minimize the adverse impacts of the project and still achieve the project's goals

³ CARE provided its own bank statement for the months of December 2003 and 2004 in a Supplement to CARE's NOI in A.02-09-043.

CARE is reminded of the Legislative intent expressed in PU Code § 1801.3(f) that the Commission administer its intervenor compensation program in a manner that avoids unproductive or unnecessary participation. CARE must cooperate with other intervenors and stakeholders in order to minimize duplication of effort regarding issues of concern to residential customers.

6. Itemized Estimate of Costs of Participation

The NOI must include an itemized estimate of the compensation that the customer expects to request, given the likely duration of the proceeding as it appears at the time the NOI is filed. (§ 1804(a)(2)(A)(ii).) CARE states that it expects to request compensation in the amount of \$342,500:

\$ 120,000	300 hours of professional time@ \$400/hour
120,000	600 hours of expert time @ \$200/hour
37,500	300 hours of member's time @ \$125/hour
30,000	300 hours of technical assistance @\$150/hour
20,000	costs
\$342, 500	Total Estimated Cost of Participation

CARE states that it will provide time records, expense records and justification for hourly rates in a request for an award of compensation, if it eventually files one.

CARE has included an itemized estimate of the compensation that the customer expects to request, given the likely duration of the proceeding as it appears at the time the NOI is filed.

IT IS RULED that:

1. Californians for Renewable Energy, Inc. (CARE) timely filed a Notice of Intent to Claim Intervenor Compensation.

2. CARE is a customer for the purposes of intervenor compensation.
3. CARE reasonably states the adequacy of its representation.
4. CARE states that under either criteria set forth in Section 1804(a)(2)(B) it has established that its participation without an award of intervenor compensation would pose a significant financial hardship.
5. CARE reasonably states the nature and extent of its planned participation, as far as it is possible to know as of the filing of the Notice of Intent. If CARE files for intervenor compensation, CARE will need to make a reasonable showing that its participation minimized unproductive or unnecessary duplication of work effort.
6. CARE presents a satisfactory itemization of an estimate of compensation it expects to request. The reasonableness of the hourly rates shall be addressed in the later request for compensation, if any, by CARE.
7. CARE is eligible for an award of intervenor compensation. The exact amount of the award, if any, shall be determined based on the reasonableness of its request for award, and this ruling “in no way ensures compensation.” (§ 1804(b)(2).) The Commission may audit the records and books of CARE to the extent necessary to verify the basis of the award. (§ 1804(d).)

Dated September 15, 2005, at San Francisco, California.

/s/ CAROL BROWN

Carol Brown
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on CARE Notice of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated September 15, 2005, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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